

REMARKS

Reconsideration and allowance are respectfully requested.

Newly added claims 43-64 are similar in scope to cancelled claims 21-42 and address the issues on page 2 of the office action. No new matter has been added. Entry and allowance are requested.

The present application relates to safety apparatus for people working on a structure, the apparatus comprising a vertical support, which is adjustable in length, the support having lower and upper parts each having fixing means to attach the part to a structure, and the upper part being moveable with respect to the lower part and having a supporting cable extending therefrom.

The new independent claims respectively specify that the supporting cable is used as an overhead safety cable. Moreover, the new independent claims also respectively specify that the supporting cable is used as a safety cable to which people may tether themselves, which is not taught nor suggested by the references of record.

Antecedence for the "overhead" and "tethering" features of new independent claims 43, 53 and 64 exist in Figures 7 and 9 to 12 and the respective accompanying descriptions at:

Page 12, lines 21-22: "The safety cable 203 must always stand above the head of the scaffolders."

Page 11, lines 24-27: "A scaffolder 707 equipped with a safety harness 709 is depicted as stood on flat surface 702. He

is tethered to safety cable 203 by way of a cable 711 attached to a cable clamping device 713, preferably of the type known as inertia reel."

Page 12, lines 4-8: "Safety cable clamping devices 713 and 714 are preferably of the type known as inertia reel for the purpose of enabling a scaffolder 708 to secure his harness 710 to the safety cable 203 whilst still on the ground before climbing onto the scaffold 701 and putting himself at risk of subsequently falling from a high elevation."

Claims 43-64 are patentable under U.S.C. 112, first paragraph.

Claims 29 and 39, now 51 and 61 respectively, were rejected as containing subject-matter which was not sufficiently described in the specification or figures.

Applicant respectfully traverses this opinion having regard to the detailed description of the functional requirements of said spring-loaded foot provided between Page 17, line 23 and Page 18 line 23, as:

"In a preferred embodiment of the present invention, substantial vertical support 201 is equipped with spring-loaded supporting foot 1109. Said supporting foot 1109 is implemented at the lower extremity of lower tube 204 of said substantially vertical support 201. It is configured to confer additional stability to safety apparatus in its ensemble, by way of transferring part of the weight of the safety apparatus in its ensemble to the lowest transversal pole 104 the base of said

spring-loaded supporting foot is resting on.

As most of the total weight of the safety apparatus is in its ensemble it is supported by first and second fixing means of each substantially vertical supports 201 and 202, upon performing the length adjustment in order for supporting cable 203 to be adjusted to an appropriate height, said spring-loaded supporting foot 1109 then rotates downward as it comes into contact with the underside of the next, higher transversal pole, then slide along the external diameter of said pole in a sensibly vertical direction. Upon the extremity of said spring-loaded supporting foot 1109 having slid along the full external diameter of said next higher transversal pole, said extremity being now situated above next higher transversal pole, said spring action derived from the spring-loaded characteristic of said supporting foot actuate the rotation of said supporting foot back to a position sensibly perpendicular to substantially vertical support 201 and parallel to supporting cable 203. Said spring-loaded supporting foot 1109 can then support part of the weight of safety apparatus in its ensemble on said next, higher transversal pole. A spring-loaded foot 1110, identical in configuration, characteristics and function to spring-loaded supporting foot 1109, is implemented at the lower extremity of lower tube 206 of substantially vertical support 202, such that both substantially vertical supports 201, 202 are evenly supported in this way."

Claims 43-64 are patentable under 35 U.S.C. 112, second paragraph.

Claims 31 and 41, now 53 and 63 respectively, were rejected as failing to particularly point out and distinctly claim the subject-matter considered as the invention, namely that the cable is used as a safety cable between steps (a) and (b).

Applicant respectfully traverses this opinion having regard to the amendments detailed thereabove, wherein the additional features now particularly point out and distinctly claim said subject matter.

Claims 43-64 are patentable under 35 U.S.C. 102(b) over US 5,718,305 (Price).

Price relates to a fire escape for buildings consisting of a ladder made in sections sliding on each other, wherein the upper section is jointed and supported to the front wall of a building, windlass within the building. A sectional rope leads from a windlass to the lowermost section of the ladder such that said ladder may be folded and supported at an elevated position on the building wall when not in use, whereby a person may lower said ladder from any floor within said building.

There is no suggestion in Price of any cable, rope or the like being used as a safety cable in any capacity. Therefore, lacking all the claimed elements, Price cannot anticipate the present invention as claimed.

For an invention to be anticipated, it must be demonstrated

that each and every element of the claimed invention is present in the "four corners" of a single prior art, either expressly described therein or under the principle of inherency. Lewmar Marine Inc. v Barient Inc., 3 USPQ2d 1766, 1767-1768 (CAFC, 1987). The absence from prior art reference any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible, Inc., 230 USPQ 81, 84 (Fed. Cir. 1986).

Claims 43-64 are patentable under 35 U.S.C. 103(a) over US 6,039,150 (Palmer) in conjunction with other references.

The Examiner equips the device of Palmer with cables and clamping devices of Bruske, Murray or Garcia; equips the device of Palmer with internal and external strengthening components Bruske, Murray or Garcia for reinforcing his vertical supports and, further, equips the device of Palmer with internal and external strengthening components according to Aaldenberg and Keeton or Ammons for reinforcing his vertical supports, using the present invention as a guide for hindsight reconstruction. However, that is an erroneous basis for any obviousness holding.

"The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness." In re Oetiker, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992).

Applicant first submits that the respective teachings of Keeton, Aaldenberg and Ammons remain redundant as they relate to

entirely different fields of art, whereby the rejection of claims 25 and 35 upon said teachings is moot.

Those references are non-analogous art and are not available as a reference against the present claims. See In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992): "In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." citing In re Deminski, 230 USPQ 313, 315 (Fed. Cir. 1986).

Applicant next submits that neither Palmer nor Bruske, Murray or Garcia disclose safety apparatus which includes an overhead safety cable solving a first problem of providing security to workers from ground level, which is amply described in the present application but of which no mention is made by said prior art.

Applicant finally submits that neither Palmer nor Bruske, Murray or Garcia disclose safety apparatus including an overhead safety cable, which solves a second problem of maintaining the integrity of vertical support or supports thereof when the supporting cable is used as an overhead safety cable and high tension is rapidly exerted thereon by a worker's fall with internal or external strengtheners or a combination thereof, said second problem being also amply described in the present application but of which no mention is made by said prior art.

Applicant thus submits that new independent claims 43 and 64

are non-obvious over any of the suggested combinations of Palmer '50 with Bruske, Murray or Garcia. Because the independent claims are patentable therefor respective dependent claims are also non-obvious over the prior art of record.

New independent method claim 53 corresponds to new independent apparatus claim 43 and new independent apparatus claim 64 has been amended accordingly, wherein the remaining claims are dependent claims. Consequently, all claims on file are novel over the disclosure in Price and inventive over the disclosure in Palmer and its combination with Bruske, Murray or Garcia.

If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent. In re Oetiker, 25 USPQ2d 1443, 1447 (Fed. Cir. 1992) citing In re Grabiak, 226 USPQ 870, 873 (Fed. Cir. 1985).

In fact, the office action does not provide any basis for the rejection of each of the features in every dependent claim and therefore Applicant is unable to determine the Examiner's basis for the rejection of each of the claims to adequately rebut the rejections. Therefore, as dictated by Oetiker "without more applicant is entitled to grant of the patent."

Applicant therefore respectfully requests grant of the present application.

Nothing in the references, either singly or in combination, teaches or suggests the claimed features. Therefore, the

references cannot anticipate nor render obvious the present invention as claimed.

Since Applicant has presented a novel, unique and non-obvious invention, reconsideration and allowance are respectfully requested.

Respectfully,

A handwritten signature in cursive script, appearing to read "JC Wray", is written over the typed name.

James C. Wray, Reg. No. 22,693
Meera P. Narasimhan, Reg. No. 40,252
1493 Chain Bridge Road, Suite 300
McLean, Virginia 22101
Tel: (703) 442-4800
Fax: (703) 448-7397

September 12, 2003